

H 3939 PCT/US
SERIAL NO. 10/088,059

REMARKS

In the above-identified Office Action, the Examiner requires the election of a single species of the 2-nitro-p-phenylenediamine derivatives claimed in the present application. Applicants respectfully traverse.

Claims 19-22 are directed toward a method of coloring keratin fibers within the reddish color range comprising at least one derivative of 2-nitro-p-phenylenediamine corresponding to formula (I), as shown in claim 19. Claims 23-38 claim the composition of formula (I). Applicants respectfully submit that the claims present a single inventive concept and that each species within the generic of formula (I) exhibits the same technical features.

The Examiner recites that the instant invention lacks unity of invention because, under PCT Rule 13.1, the various species are not linked so as to form a single general inventive concept. Applicants take issue with this assertion and, in support of their position, present evidence that during the examination of the corresponding PCT application this invention was regarded as encompassing a single general inventive concept. Enclosed herewith and marked as Exhibit 1 is a copy of the original Preliminary International Examination Report of the PCT application, in the original German text. Exhibit 1a is the English Language translation of Exhibit 1. Applicants kindly direct the Examiner's attention to the Exhibits where it can be seen that, under PCT examination guidelines, there was in fact no rejection based on the present invention failing to set forth a single inventive concept under PCT Rule 13.1. In view hereof, Applicants respectfully request that the Examiner therefore reconsider and withdraw the recited species election.

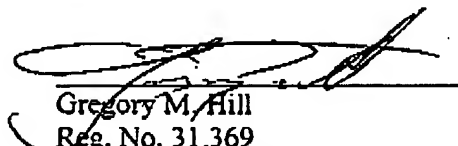
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Applicants respectfully request that the Examiner consider the examination of a subspecies of formula (I) in which only one of R1 to R4 is a C5 ring with the remaining ones being H or an hydroxyalkyl group. X would be limited to H. However, in the event that the species election requirement is maintained and for the sole purpose of submitting a response to the species election, Applicants provisionally adopt, with traverse, the species, 1-(N-cyclopentylamino)-2-nitro-4-aminobenzene. All pending claims are readable on the elected species. However, no subject matter is being cancelled in order to afford the Examiner the opportunity to reconsider and withdrawn the recited species election.

Applicants again respectfully request that the Examiner reconsider this species election especially in view of the fact that during the examination of the corresponding international application, no objection was raised for failing to comply with PCT Rule 13.1. By attempting to split this application into one or more additional divisional applications there is an undue hardship that would be placed on Applicants' Assignee due to the additional fees that must be borne for the filing, prosecuting and maintaining of such derivative applications.

Applicants respectfully request the favorable reconsideration of all pending claims. The Commissioner is authorized to charge any deficiency in the required fee or to credit any overpayment made in connection with this response to Deposit Account 01-1250.

Respectfully Submitted,


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